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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAYMOND HAY, individually and on
behalf of all similarly situated persons,

Plaintiff,

v.

METAVERSE CORPORATION, a New
Jersey company.

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Raymond Hay (“Plaintiff”) brings this class action complaint individually
 2 and on behalf of all others similarly situated against Metaverse Corporation d/b/a Framed
 3 Art and Fulcrum Gallery (“Defendant”). The allegations contained in this class action
 4 complaint are based on Plaintiff’s personal knowledge of facts pertaining to himself and
 5 upon information and belief, including further investigation conducted by Plaintiff’s
 6 counsel.

7 **I. NATURE OF THE ACTION**

8 1. “It has long been considered a deceptive practice to state falsely that a product
 9 ordinarily sells for an inflated price but that it is being offered at a special reduced price,
 10 even if the offered price represents the actual value of the product and the purchaser is
 11 receiving his money's worth.” *F.T.C. v. Colgate-Palmolive Co.*, 380 U.S. 374, 85 S. Ct.
 12 1035, 13 L. Ed. 2d 904 (1965).

13 2. This is a class action lawsuit brought to address Defendant’s misleading and
 14 unlawful pricing, sales, and discounting practices on its websites www.framedart.com and
 15 www.fulcrumgallery.com (collectively, the “websites”)¹. Defendant advertises fake and
 16 inflated comparison reference prices to deceive customers into a false belief that the sale
 17 price is a deeply discounted bargain price.

18 3. Anyone visiting Defendant’s websites during a “50% off sitewide”
 19 promotion who buys an item on “sale” from a “regular” price is being misled. This is
 20 because that item has not been sold or listed for sale in the recent past on the websites at
 21 the regular price. Further, because the websites are the only channel through which
 22 Defendant’s custom products are sold, Defendant cannot justifiably claim another retailer
 23 has sold that same item for the regular price.

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27 ¹ Defendant’s additional domains www.urbanloftart.com and
 28 www.canvasgalleryart.com were merged into www.framedart.com and are included
 within the defined term “websites.”

1 4. All the reference prices on the websites are fake. They are not original,
2 regular, retail, or former prices. They are inflated prices posted to lure consumers into
3 purchasing items from Defendant.

4 5. Defendant also falsely advertises sales as being of limited duration, or
5 available for a limited time, when the sale is actually perpetual.

6 6. Thus, Defendant's sale is no sale at all. It is a scheme to deceive consumers
7 into believing they are receiving a bargain when in truth they are not. It also harms
8 competition by unfairly capturing market share from other companies that do not engage
9 in such deceptive sales practices.

10 7. As a result, consumers are deceived into spending money they otherwise
11 would not have spent, purchasing items they would not have purchased, and/or spending
12 more money for an item than they otherwise would have absent deceptive marketing.

13 **PARTIES**

14 8. Plaintiff Raymond Hay is a resident of the State of California and County of
15 Los Angeles. He was present in Los Angeles, California at the time he made his purchase
16 from Defendant.

17 9. Defendant Metaverse Corporation is a New Jersey corporation with its
18 principal place of business in Monmouth Junction, New Jersey. Defendant is a
19 multichannel online retailer in the wall art and home décor market, advertising and selling
20 its custom products through www.framedart.com and www.fulcrumgallery.com. Through
21 the websites, Defendant sells its products to consumers in California.

22 **JURISDICTION AND VENUE**

23 10. This Court has jurisdiction over this lawsuit under the Class Action Fairness
24 Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are
25 at least 100 class members; (ii) the aggregate amount in controversy exceeds \$5,000,000,
26 exclusive of interest and costs; and (iii) at least one putative class member and one
27 Defendant are citizens of different states.

1 11. Venue is proper in this district pursuant to 28 U.S.C. § 1331 because a
 2 substantial part of the events or omissions giving rise to the claims herein occurred in this
 3 judicial district. As set forth herein, Defendant owns and operates the website, and
 4 marketed, sold, and shipped products to purchasers located in this district, including
 5 Plaintiff.

6 12. Further, as set forth herein, Defendant has contacts in this district sufficient
 7 to subject it to the personal jurisdiction of this district as if this district were a separate
 8 state. Defendant continuously and systematically places goods into the stream of
 9 commerce for distribution in California, maintains an interactive commercial website,
 10 offers to ship products to California, and allows customers in California to order products.
 11 Exercising jurisdiction over Defendant is fair, just, and reasonable considering the quality
 12 and nature of the Defendant's acts that occur in California and which affect interests
 13 located in California. Defendant has purposefully availed itself of the privilege of
 14 conducting activities in California, and should reasonably anticipate being haled into court
 15 in California.

16 **IV. GENERAL ALLEGATIONS**

17 **A. Company Background**

18 13. Defendant's corporate history is detailed on <https://www.metaversecorp.com>.
 19 As represented therein, Metaverse launched fulcrumgallery.com and framedart.com in
 20 approximately 2004 as an online store, and owns and operates both website domains.

21 14. Defendant built its brands "to the second largest online retailers of art prints
 22 and posters in the country, offering over 200,000 art prints which can be custom framed
 23 or transferred to canvas." Defendant is a "full-fledge retail corporation, fulfilling orders
 24 through FulcrumGallery.com and FramedArt.com." Through its "network of brands,"
 25 Defendant "shipped over 815,000 customer orders to over 50 countries worldwide" and
 26 stocks "over 1,000,000 products under our roof for same day shipping, and do all of our
 27 custom manufacturing of framed artwork and canvas transfers in house." Defendant is

1 “dedicated to creating custom high-quality artwork and expert shopping experiences for
2 our retail customers.”

3 15. Defendant exclusively sells its products online. Defendant’s marketing
4 emphasizes their bargains and their vast online presence.

5 **B. Defendant’s False and Deceptive Pricing Scheme**

6 16. Defendant’s business model relies on deceiving consumers with fake sales.
7 Defendant prominently displays on the landing page of its websites some form of sale
8 where all or nearly all products are supposedly marked down by a specific percentage, for
9 example, 50% or 60% off. When one sale expires, another equivalent sale is promptly
10 instituted. This cycle continues over and over.

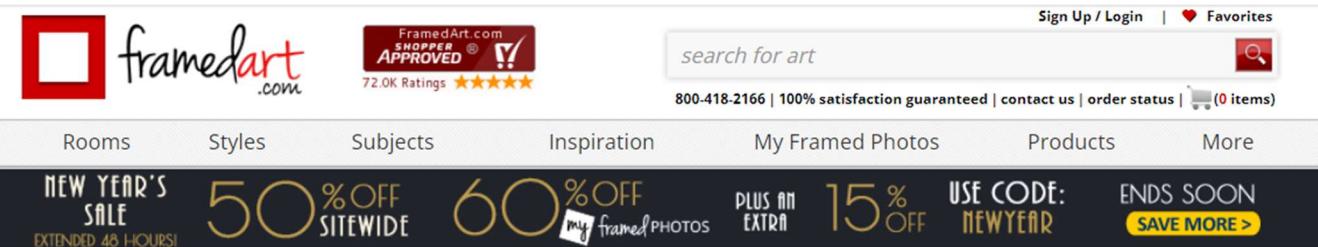
11 17. All or nearly all products on the websites are represented as being discounted
12 from a substantially higher reference price. On individual listing pages, the supposed
13 markdowns are represented to the consumer by prominently displaying a crossed-out
14 reference price (listed as “regular price”) next to the sale price. Alternatively, Defendant
15 runs the same fake promotions by providing customers with sitewide promo codes and/or
16 discounts. Defendant employs these deceptive tactics to convey to customers that the
17 product had previously sold in the recent past at the reference price, but is now being sold
18 to the customer at a substantial discount.

19 18. However, this reference price is always a falsely inflated price because
20 Defendant never sells its items at the reference price. The only purpose of the reference
21 price is to mislead customers into believing that the displayed reference price is an
22 original, regular, or retail price at which Defendant usually sells the item or previously
23 sold the item in the recent past. As a result, Defendant falsely conveys to customers that
24 they are receiving a substantial markdown or discount, when in reality the alleged discount
25 is false and fraudulent.

26 19. Moreover, because Defendant’s products are sold only through Defendant’s
27 websites, the reference price cannot mean the prevailing market price of the product at
28 any outlet other than Defendant’s website.

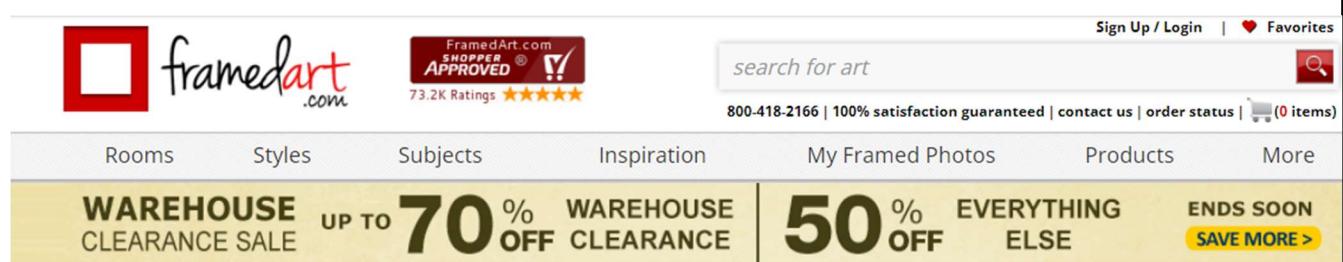
1 20. Worse yet, the website will often display messages like “ENDS TONIGHT,”
 2 “ENDS SOON,” or similar, to give customers a sense of urgency to take advantage of the
 3 fake promotions, notwithstanding that Defendant’s sales are perpetual.

4 21. For example, in early January 2023, Defendant ran a sitewide sale of 50% off
 5 all items, plus an extra 15% off with a coupon code, and stated the sale “ENDS SOON.”



11 22. That sale was false and misleading. When it supposedly expired, it was
 12 immediately replaced by another equivalent sitewide sale throughout January, February,
 13 March, April, and May, as shown in the images below.

14 Website on January 28, 2023:



21 Website on March 7, 2023



27 Website on April 3, 2023

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7 Website on May 3, 2023

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13 Website on June 8, 2023

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23. This is not a new or isolated sales practice by Defendant, but continued regularly throughout at least 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022. Additional exemplar continuous and perpetual sales on www.framedart.com are shown below.

Website on November 21, 2019

1 Website on May 15, 2020
 2
 3
 4

Sign Up / Login | Favorites

search for art

800-418-2166 | 100% satisfaction guaranteed | contact us | order status | (0 items)

Rooms Styles Subjects Inspiration My Framed Photos Products More

50% OFF EVERYTHING PLUS **60% OFF** **my framed PHOTOS** ENDS SOON! [SAVE MORE >](#)

5 Website on April 12, 2021
 6
 7

Sign Up / Login | Favorites

search for art

800-418-2166 | 100% satisfaction guaranteed | contact us | order status | (0 items)

Rooms Styles Subjects Inspiration My Framed Photos Products More

50% OFF EVERYTHING PLUS **60% OFF** **my framed PHOTOS** ENDS SOON! [SAVE MORE >](#)

10
 11
 12
 13
 14
 15
 16 24. Additional exemplar continuous and perpetual sales on
 17 www.fulcrumgallery.com are shown below.
 18

19 Website on May 15, 2023
 20

FulcrumGallery

FulcrumGallery.com SHOPPER APPROVED 44.9K Ratings ★★★★★

1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles Subjects Rooms Artists Products Pictures To Art More

BIG WEEKEND CLEARANCE SALE UP TO **70% OFF** WAREHOUSE CLEARANCE **50% OFF** EVERYTHING ELSE ENDS TONIGHT [SAVE MORE >](#)

25
 26 Website on May 6, 2023
 27
 28



1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles

Subjects

Rooms

Artists

Products

Pictures To Art

More

50% OFF
SITEWIDE

60% OFF
Pictures Art

PLUS AN
EXTRA

10% OFF

USE CODE:
10SAVE

ENDS SOON
[SAVE MORE >](#)

Website on April 2, 2023



1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles

Subjects

Rooms

Artists

Products

Pictures To Art

More

50% OFF
SITEWIDE

60% OFF
Pictures Art

PLUS AN
EXTRA

10% OFF

Use Code:
FRIENDSFAMILY

ENDS SOON
[SAVE MORE >](#)

Website on March 11, 2023



1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles

Subjects

Rooms

Artists

Products

Pictures To Art

More

50% OFF
SITEWIDE

60% OFF
Pictures Art

PLUS AN
EXTRA

10% OFF

USE CODE:
10MARCH

ENDS TONIGHT
[SAVE MORE >](#)

Website on February 2, 2023



1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles

Subjects

Rooms

Artists

Products

Pictures To Art

More

50% OFF
SITEWIDE

60% OFF
Pictures Art

+ AN
EXTRA

10% OFF

USE CODE:
SAVE10

ENDS TONIGHT
[SAVE MORE >](#)

Website on January 28, 2023



1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | (0 items)

search for art

Search

Styles

Subjects

Rooms

Artists

Products

Pictures To Art

More

WAREHOUSE
CLEARANCE SALE

UP TO

70% OFF

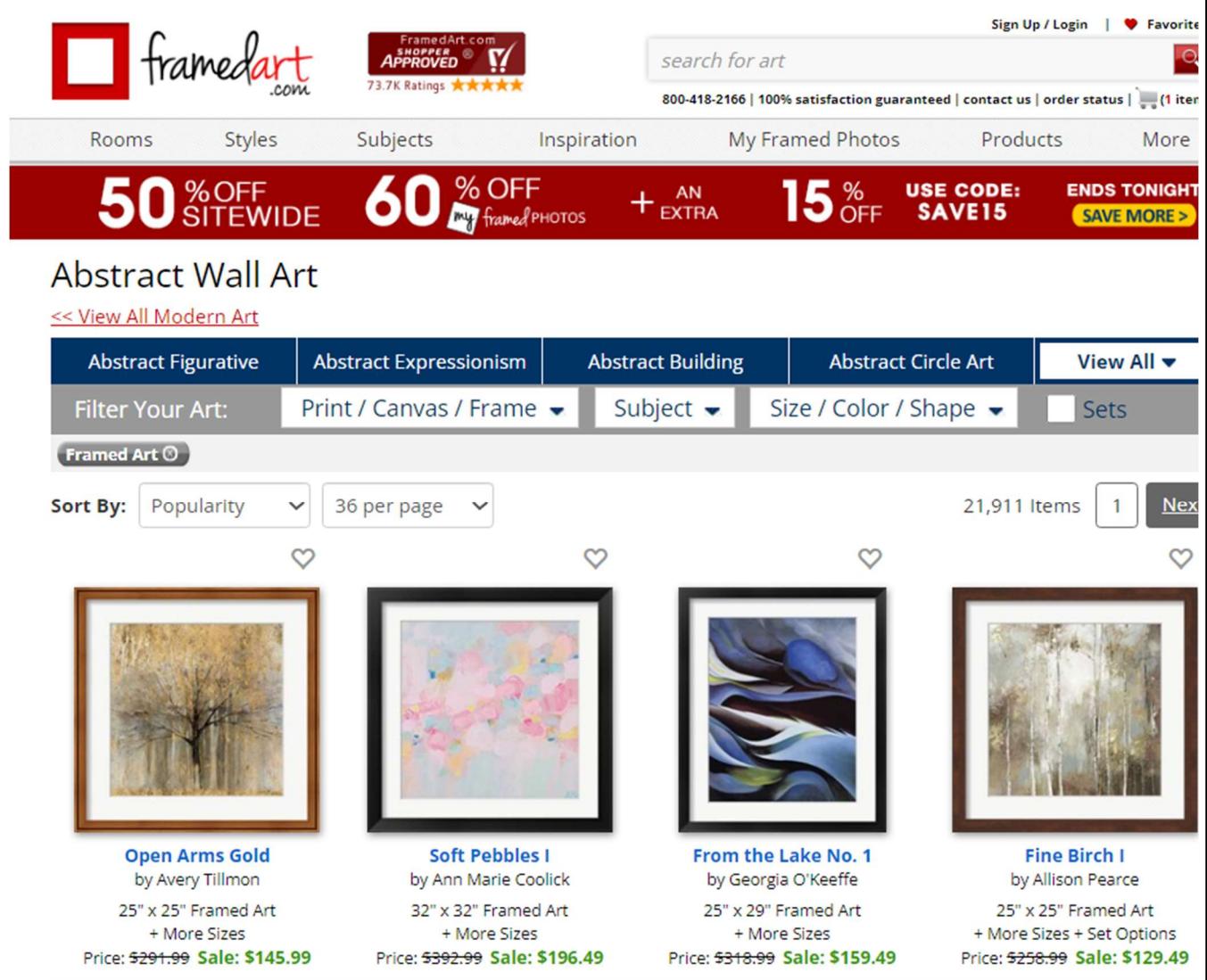
WAREHOUSE
CLEARANCE

50% OFF

EVERYTHING
ELSE

ENDS SOON
[SAVE MORE >](#)

1 25. Defendant further reinforces the false conception that the consumer has
2 received a deep discount off of the regular and retail price during the order process. Using
3 “strikethrough pricing,” each product listing page shows the purported retail and regular
4 price in stricken text, and adjacent to that stricken price is the fake sale price. Exemplars
5 are shown below.



1  **framedart**.com

2  73.8K Ratings ★★★★★

3 [Sign Up / Login](#) |  [Favorites](#)

4 

5 [800-418-2166 | 100% satisfaction guaranteed | contact us | order status | !\[\]\(af70b060c7f5ad3fd9aeda2ef5aded1a_img.jpg\) \(1 item\)](#)

6 Rooms Styles Subjects Inspiration My Framed Photos Products More

7 **50% OFF EVERYTHING** PLUS **60% OFF my framed PHOTOS** ENDS SOON! [SAVE MORE >](#)

8 

9 Boys in a Pasture by [Winslow Homer](#)

10   

11 **Sale Price: \$140.99**
Regular Price: \$281.99

12 

13 Pay in 4 interest-free payments of \$35.25 with [PayPal](#). [Learn more](#)

14  In Stock - Ships within 1-2 days

15 **Framed Print** Item # 398620

16 **Finished size: 30" x 23"** [See more product details ...](#)

17 **Size:**

18  x 


19 [1-800-644-1278 | Order Status | Contact Us | 100% Satisfaction Policy | !\[\]\(687ce5593879802e63fb8ee18d5e1f05_img.jpg\) \(0 items\)](#)

20 

21  **FulcrumGallery**

22  44.9K Ratings ★★★★★

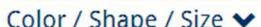
23 Styles Subjects Rooms Artists Products Pictures To Art More

24 **50% OFF SITEWIDE** **60% OFF Pictures TO Art + AN EXTRA 15% OFF** **USE CODE: SAVE15** ENDS TONIGHT [SAVE MORE >](#)

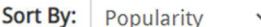
25 **Abstract Art**

26 [<< View All Modern Art](#)

27     

28 **Filter Results By:**   

29 **Abstract Artwork**

30 Sort By:  36 per page  21,931 Items  

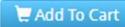
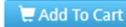
31    

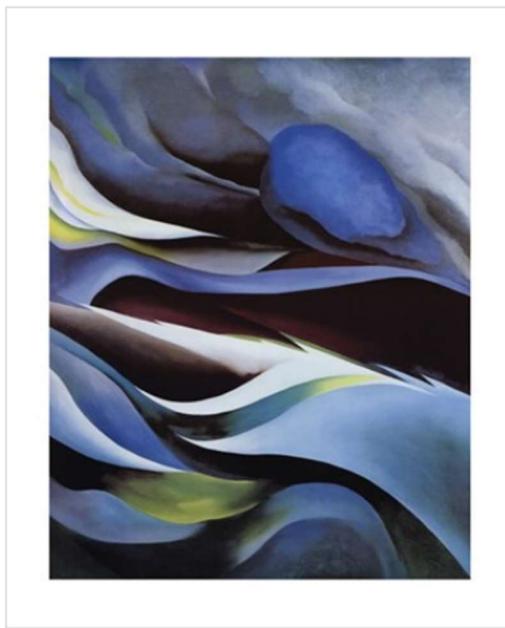
32 **Open Arms Gold**
Avery Tillmon
18" x 18" Fine Art Print
+ Multiple Sizes Available
Price: \$62.99
Sale: \$31.49

33 **Soft Pebbles I**
Ann Marie Coolick
24" x 24" Fine Art Print
+ Multiple Sizes Available
Price: \$72.99
Sale: \$36.49

34 **From the Lake No. 1**
Georgia O'Keeffe
22" x 27" Fine Art Print
+ Multiple Sizes Available
Price: \$73.99
Sale: \$36.99

35 **Fine Birch I**
Alison Pearce
18" x 18" Fine Art Print
+ Multiple Sizes Available
Price: \$28.99
Sale: \$14.49

36        



Georgia O'Keeffe From the Lake No. 1

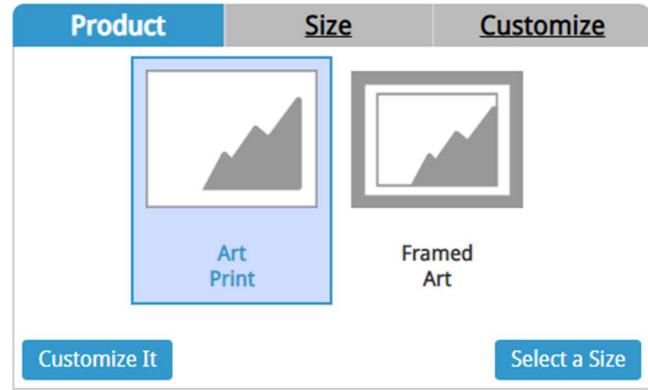
Sale Price: \$36.99
Regular Price: \$73.99

Add to Cart

Art Print
Finished size: 22" x 27"
[See more product details ...](#)

In Stock - Ships within 2-4 days

Item # 865872



26. These pricing and advertising practices reflect high-pressure fake sales and
14 are deceptive. Defendant intends to mislead consumers into believing that they are getting
15 a bargain by buying products from Defendant on sale and at a substantial and deep
16 discount. But Defendant rarely never sells any of its products at the reference price. The
17 reference price is, therefore, artificially inflated, and the advertised discounts are phantom
18 markdowns.

19 **C. Plaintiff's Purchase from Defendant's Website**

20 27. On May 21, 2023, Plaintiff visited Defendant's website www.framedart.com
21 and purchased a Winslow Homer framed art print. Plaintiff saw on the website's landing
22 page that Defendant was prominently running a "50% off sitewide" plus "an extra 15%
23 off" with a discount code. The sale was advertised as "ENDS SOON." Plaintiff then
24 navigated to the listing page for the product he ultimately purchased and saw a discounted
25 price of \$140.99 and an adjacent, higher, stricken price of \$281.99. He then purchased
26 the product with the understanding that he was receiving all advertised discounts off the
27 regular price. After accounting for the additional 15% discount, and adding shipping

1 costs, Plaintiff paid \$147.83.

2 28. Plaintiff thus viewed and relied on Defendant's purported current and
3 limited-time sale promotion. He relied on the representation that the product had in fact
4 been offered for sale, and previously sold, in the recent past at the stated "regular"
5 reference price. And he relied on the representation that the product was truly on sale and
6 being sold at a substantial markdown and discount.

7 29. The products Plaintiff purchased were not substantially marked down or
8 discounted, and any discount he was receiving had been grossly exaggerated.

9 30. For at least the 90-day period prior to Plaintiff's purchase, and months and
10 years more, Defendant had not offered any of the items sold on its website at the reference
11 prices. The reference prices were fake prices.

12 31. Plaintiff would not have purchased the items, or would not have paid as much
13 as he did, had Defendant been truthful. Plaintiff was persuaded to make his purchase
14 because of the fake sale based on Defendant's fake reference price.

15 **D. Research Shows That the Use of Reference Price Advertising Schemes
16 Influence Consumer Behavior and Perceptions of Value**

17 32. Academic studies support the effectiveness of Defendant's deceitful pricing
18 scheme. In an article titled *Comparative Price Advertising: Informative or Deceptive?*
19 (cited in *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106 (9th Cir. 2013)), Professors Dhruv
20 Grewal and Larry D. Compeau write that, "[b]y creating an impression of savings, the
21 presence of a higher reference price enhances subjects' perceived value and willingness to
22 buy the product."² Thus, "empirical studies indicate that, *as discount size increases,
23 consumers' perceptions of value and their willingness to buy the product increase, while
24 their intention to search for a lower price decreases.*"³ Indeed, the Ninth Circuit observed

27

28 ² Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or
Deceptive?*, 11 J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992).

28 ³ *Id.* at 56 (emphasis added).

1 that “[m]isinformation about a product’s ‘normal’ price is . . . significant to many
2 consumers in the same way as a false product label would be.” *Hinojos*, 718 F.3d at 1106.

3 33. Professors Compeau and Grewal reached similar conclusions in a 2002
4 article: “decades of research support the conclusion that advertised reference prices do
5 indeed enhance consumers’ perceptions of the value of the deal.”⁴ The professors also
6 found that “[c]onsumers are influenced by comparison prices even when the stated
7 reference prices are implausibly high.”⁵

8 34. In another publication, Professors Joan Lindsey-Mullikin and Ross D. Petty
9 concluded that “[r]eference price ads strongly influence consumer perceptions of value . . .
10 . . . Consumers often make purchases not based on price but because a retailer assures them
11 that a deal is a good bargain. This occurs when . . . the retailer highlights the relative
12 savings compared with the prices of competitors . . . [T]hese bargain assurances (BAs)
13 change consumers’ purchasing behavior and may deceive consumers.”⁶

14 35. Similarly, according to Professors Praveen K. Kopalle and Joan Lindsey-
15 Mullikin, “research has shown that retailer-supplied reference prices clearly enhance
16 buyers’ perceptions of value” and “have a significant impact on consumer purchasing
17 decisions.”⁷

18 36. The results of a 1990 study by Professors Jerry B. Gotlieb and Cyndy Thomas
19 Fitzgerald, came to the conclusion that “reference prices are important cues consumers
20 use when making the decision concerning how much they are willing to pay for the
21 product.”⁸ This study also concluded that “consumers are likely to be misled into a

22
23 ⁴ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It Or Not*, J. of
24 Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002).

25 ⁵ *Id.*

26 ⁶ Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price Search:
27 Deception and Competition*, 64 J. of Bus. Research 67 (January 2011).

28 ⁷ Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On
Consumer Price Expectations*, 79 J. of Retailing 225 (2003).

29 ⁸ Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of Advertised
Reference Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d Bus. Res.
1 (1990).

1 willingness to pay a higher price for a product simply because the product has a higher
2 reference price.”⁹

3 37. Accordingly, research confirms that deceptive advertising through the use of
4 fake reference pricing is intended to, and in fact does, influence consumer behavior by
5 artificially inflating consumer perceptions of a given item’s value and causing consumers
6 to spend money they otherwise would not have, purchase items they otherwise would not
7 have, and/or purchase products from a specific retailer.

8 **E. Defendant’s Deceptive Pricing Practice Violates Federal Law**

9 38. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive
10 acts or practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under FTC
11 regulations, false former pricing schemes similar to the ones employed by Defendants, are
12 deceptive practices that violate the FTCA.

13 39. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

14
15 (a) One of the most commonly used forms of bargain advertising is to offer a
16 reduction from the advertiser’s own former price for an article. If the *former price*
17 is the actual, bona fide price at which the article was offered to the public on a
18 *regular basis* for a reasonably *substantial period of time*, it provides a legitimate
19 basis for the advertising of a price comparison. Where the former price is genuine,
20 the bargain being advertised is a true one. If, on the other hand, the former price
21 being advertised is not bona fide but fictitious – for example, where an *artificial,*
22 *inflated price* was established for the purpose of enabling the subsequent offer of a
23 large reduction – the “bargain” being advertised is a false one; the purchaser is not
24 receiving the unusual value he expects.

25
26 (b) A former price is not necessarily fictitious merely because no sales at the
27 advertised price were made. The advertiser should be especially careful, however,
28 in such a case, that the price is one at which the product was openly and actively
offered for sale, for a reasonably substantial period of time, in the recent, regular
course of her business, honestly and in good faith – and, of course, not for the
purpose of establishing a fictitious higher price on which a deceptive comparison
might be based.

⁹ *Id.*

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain,” Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn’t care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” ***This is obviously a false claim.*** The advertised “bargain” is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he ***never offered the article at all***; he might feature a price which was ***not used in the regular course of business***, or which was ***not used in the recent past*** but at some ***remote period in the past***, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was ***not maintained for a reasonable length of time***, but was immediately reduced.

40. The FTCA also prohibits the pricing scheme employed by Defendant regardless of whether the product advertisements and representations use the words “regular,” “original,” or “former” price. Under 16 C.F.R. § 233.1:

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been “Reduced to \$9.99,” when the former price was \$10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.

41. The FTCA also prohibits retailers from (1) falsely representing that they are selling at “factory” prices, and (2) offering fake limited duration sales. See 16 C.F.R. § 233.5 which provides:

[Retailers] should not represent that they are selling at “*factory*” *prices* when they are not selling at the prices paid by those purchasing *directly from the manufacturer*.

...

They should *not offer an advance sale* under circumstances where they *do not in good faith expect to increase the price at a later date*, or make a ‘limited’ offer which, in fact, is not limited.

F. Class Action Allegations

42. Plaintiff brings this action on behalf of himself and all persons similarly situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure and seeks certification of the following class (the “Class”):

All persons in California who purchased one or more of Defendant’s products from www.framedart.com or www.fulcrumgallery.com, during the Class Period, at a discount from a higher reference price.

43. Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which either Defendant has or had a controlling interest. Also excluded from the Class are persons or entities that purchased products from Defendant for purposes of resale.

44. The “Class Period” is the time period beginning on the date established by the Court’s determination of any applicable statute of limitations, after consideration of any tolling, discovery, concealment, and accrual issues, and ending on the date of entry of judgment.

45. Plaintiff reserves the right to expand, limit, modify, or amend the class definitions stated above, including the addition of one or more subclasses, in connection

1 with a motion for class certification, or at any other time, based upon, among other things,
2 changing circumstances, or new facts obtained during discovery.

3 **46. Numerosity.** The Class is so numerous that joinder of all members in one
4 action is impracticable. The exact number and identities of the members of the Class is
5 unknown to Plaintiff at this time and can only be ascertained through appropriate
6 discovery, but on information and belief, Plaintiff alleges that there are in excess of
7 500,000 members of the Class.

8 **47. Typicality.** Plaintiff's claims are typical of those of other members of the
9 Class, all of whom have suffered similar harm due to Defendants' course of conduct as
10 described herein.

11 **48. Adequacy of Representation.** Plaintiff is an adequate representative of the
12 Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained
13 attorneys who are experienced in the handling of complex litigation and class actions, and
14 Plaintiff and his counsel intend to diligently prosecute this action.

15 **49. Existence and Predominance of Common Questions of Law or Fact.**
16 Common questions of law and fact exist as to all members of the Class that predominate
17 over any questions affecting only individual members of the Class. These common legal
18 and factual questions, which do not vary among members of the Class, and which may be
19 determined without reference to the individual circumstances of any member of the Class,
20 include, but are not limited to, the following:

- 21 a. Whether, during the Class Period, Defendant advertised false reference prices
22 on products offered on the website.
- 23 b. Whether, during the Class Period, Defendant advertised price discounts from
24 false reference prices on products offered on the website.
- 25 c. Whether the products listed on Defendant's website during the Class Period
26 were offered at their reference prices for any reasonably substantial period of
27 time prior to being offered at prices that were discounted from their reference
28 prices.

- 1 d. Whether Defendant's deceptive pricing scheme using false Reference Prices
- 2 constitute an "unlawful," "unfair," or "fraudulent" business practice in
- 3 violation of the California Unfair Competition Law, Cal. Bus & Prof. Code §
- 4 17200, et seq.
- 5 e. Whether Defendant's deceptive pricing scheme using false reference prices
- 6 constitutes false advertising in violation of the California False Advertising
- 7 Law under Business & Professions Code section 17500, et seq.
- 8 f. Whether Defendant's use of false reference prices on products offered on
- 9 their website during the Class Period was material.
- 10 g. Whether Defendant had a duty to disclose to customers that the reference
- 11 prices were fake "original" prices in furtherance of sham sales.
- 12 h. Whether the members of the Class are entitled to damages and/or restitution.
- 13 i. Whether injunctive relief is appropriate and necessary to enjoin Defendant
- 14 from continuing to engage in false or misleading advertising.
- 15 j. Whether Defendant's conduct was undertaken with conscious disregard of
- 16 the rights of the members of the Class and was done with fraud, oppression,
- 17 and/or malice.

18 50. **Superiority.** A class action is superior to other available methods for the fair
19 and efficient adjudication of this controversy because individual litigation of the claims of
20 all members of the Class is impracticable. Requiring each individual class member to file
21 an individual lawsuit would unreasonably consume the amounts that may be recovered.
22 Even if every member of the Class could afford individual litigation, the adjudication of
23 at least tens of thousands of identical claims would be unduly burdensome to the courts.
24 Individualized litigation would also present the potential for varying, inconsistent, or
25 contradictory judgments and would magnify the delay and expense to all parties and to
26 the court system resulting from multiple trials of the same factual issues. By contrast, the
27 conduct of this action as a class action, with respect to some or all of the issues presented
28 herein, presents no management difficulties, conserves the resources of the parties and of

1 the court system, and protects the rights of the members of the Class. Plaintiff anticipates
2 no difficulty in the management of this action as a class action. The prosecution of separate
3 actions by individual members of the Class may create a risk of adjudications with respect
4 to them that would, as a practical matter, be dispositive of the interests of the other
5 members of the Class who are not parties to such adjudications, or that would substantially
6 impair or impede the ability of such non-party Class members to protect their interests.

7 51. The products at issue in the action are substantially similar in all material
8 respects. Namely, the products were all subject to a sitewide sale, advertised with a false
9 reference price, advertised with a strike-through reference price, advertised with a false
10 sale price, and advertised with a fake sale expiration date. The products are also all sold
11 by Defendant and fall under the umbrella of art and home décor.

12 **V. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED
13 DISCOVERY**

14 52. All applicable statutes of limitations have been tolled by the delayed
15 discovery doctrine. Plaintiff and Class members could not have reasonably discovered
16 Defendant's practice of running perpetual sales, based on false reference prices, with false
17 expiration dates, prior to filing this class action litigation.

18 53. A reasonable consumer viewing Defendant's websites on multiple occasions
19 would simply believe that a product is on sale for the limited time period represented on
20 the websites. Short of visiting and checking Defendant's websites for months
21 continuously, a reasonable consumer would not suspect that Defendant's sales and pricing
22 practices were false and misleading. Nor would a reasonable consumer be able to
23 ascertain the market value of the products being sold absent extensive investigation.

24 54. Plaintiff did not learn of Defendant's deceptive practices alleged herein until
25 this action was commenced.

26 55. As a result, any and all applicable statutes of limitations otherwise applicable
27 to the allegations herein have been tolled.

FIRST CAUSE OF ACTION

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. &
PROF. CODE § 17200, et seq.)**

(On Behalf of the California Class)

56. Plaintiff restates the preceding allegations as if set forth herein.

57. California Business and Professions Code section 17200 et seq., known as the California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,” including any “unfair or fraudulent business act or practice” as well as “unfair, deceptive, untrue or misleading advertising.”

Fraudulent

58. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is likely to deceive members of the consuming public.

59. Here, members of the public are likely to be deceived by Defendant's conduct as alleged above. Among other things, Defendant affirmatively misrepresented the reference prices of merchandise, which thereby misled and deceived consumers into believing that they were buying merchandise from Defendant at substantially marked-down and discounted prices. Defendant's deceptive marketing practice gave consumers the false impression that their products were regularly sold on the market for a substantially higher price in the recent past than they actually were and thus led to the false impression that Defendant's products were worth more than they actually were.

60. Defendant's representations that its products were on sale, that the sale was limited in time, that the products had a specific regular price, and that the customers were receiving discounts, were false and misleading.

61. Furthermore, because Defendant sells custom products, the false reference price could not have been the market price because Defendant never sold products at the false reference price, let alone for a recent and substantial period of time.

62. In addition, Defendants had a duty to disclose the truth about its pricing deception, including, among other things, that the reference prices advertised and

1 published on their websites were not, in fact, prices at which Defendant's items had sold
2 for in the recent past for a reasonably substantial period of time, but in reality, Defendant's
3 products rarely (if ever) were offered or sold at the advertised reference prices. Defendant
4 also failed to disclose that the expiration of any given sale would be followed by a
5 substantially equivalent sale. Defendant, however, concealed this material information
6 from consumers and the general public. Members of the public, therefore, were also likely
7 to be deceived by Defendant's failure to disclose material information.

8 63. Defendant's conduct here was and continues to be fraudulent because it has
9 the effect of deceiving consumers into believing they are receiving a product that is worth
10 more than it actually is, by presenting a fake sale price.

11 64. Defendant's representations were materially misleading to Plaintiff and other
12 reasonable consumers. Consumers are heavily influenced by price, including significant
13 price reductions of purported limited duration, as employed by Defendant's high-pressure
14 sales tactics.

15 65. Plaintiff relied upon Defendant's misleading representations and omissions,
16 as detailed above, believing that he was receiving a genuine discount of very limited
17 duration from a prevailing and genuine market or regular price.

18 66. Absent Defendant's misrepresentations, Plaintiff and the Class would not
19 have purchased the items they purchased from Defendants, or, at the very least, they would
20 not have paid as much for the items as they ultimately did. Plaintiff and the class's reliance
21 was a substantial factor in causing them harm.

22 67. Had the omitted information been disclosed, Plaintiff reasonably would have
23 behaved differently. Among other things, Plaintiff would not have purchased the items he
24 purchased from Defendant, or, at the very least, would not have paid as much for the items
25 as he ultimately did.

26 68. As a result of Defendant's fraudulent business acts and practices, Defendant
27 has and continues to fraudulently obtain money from Plaintiff and members of the
28 California Class.

1 ***Unfairness***

2 69. Under the UCL, a business act or practice is “unfair” if its conduct is
3 substantially injurious to consumers, offends public policy, and is immoral, unethical,
4 oppressive, and unscrupulous, as the benefits for committing such acts or practices are
5 outweighed by the gravity of the harm to the alleged victims.

6 70. Defendant’s deceptive marketing practice gave consumers the false
7 impression that their products were regularly sold on the market for a substantially higher
8 price in the recent past than they actually were and thus led to the false impression that
9 Defendant’s products were worth more than they actually were.

10 71. Defendant’s conduct was and continues to be of no benefit to purchasers of
11 the products, as it is misleading, unfair, unlawful, and is injurious to consumers. It is also
12 against public policy, as it harms fair competition. For example, the federal Lanham Act
13 includes prohibitions on “commercial advertising or promotion” that “misrepresents the
14 nature, characteristics, qualities, or geographic origin of his or her or another person’s
15 goods, services, or commercial activities.” 41 U.S.C. § 1125(a). Defendant is siphoning
16 sales away from sellers who compete fairly on price and do not promote fake regular prices
17 and fake sales of limited duration. Further, there is no benefit to consumers by paying the
18 normal price when it is advertised on sale for a limited time.

19 72. Indeed, “[t]here is a strong public interest in preventing false advertising of
20 products in the marketplace.” *POM Wonderful LLC v. Purely Juice, Inc.*, 2008 WL
21 4222045, at *16 (C.D. Cal. July 17, 2008) (finding that where defendant has made false
22 claims as to the contents of its product and the public is deceived into paying for what it
23 believes is an accurate representation of the product, the public interest favors injunctive
24 relief to prevent the false advertising of defendant’s product); *United States v. Kennedy*,
25 2007 WL 404915, at *4 (N.D. Cal. 2007) (ordering removal of false advertising from
26 website).

27 73. The harm to Plaintiff and members of the California Class outweighs the
28 utility of Defendant’s practices. There were reasonably available alternatives to further

1 Defendant's legitimate business interests, other than the misleading and deceptive conduct
2 described herein.

3 74. As a result of Defendant's unfair business acts and practices, Defendant has
4 and continues to unfairly obtain money from Plaintiff and members of the proposed
5 California Class.

6 | *Unlawful*

7 75. A cause of action may be brought under the “unlawful” prong of the UCL if
8 a practice violates another law. Such an action borrows violations of other laws and treats
9 these violations, when committed pursuant to business activity, as unlawful practices
10 independently actionable under the UCL.

11 76. Here, by engaging in false advertising, as well as the false, deceptive, and
12 misleading conduct alleged above, Defendant has engaged in unlawful business acts and
13 practices in violation of the UCL, including violations of state and federal laws and
14 regulations. Specifically, as detailed herein, Defendant violated 16 C.F.R. § 233.1,
15 California Business & Professions Code sections 17500 and 17501, and California Civil
16 Code sections 1770(a)(9) and 1770(a)(13).

1 perfect manner at the present time and not in the future.”). Additionally, unlike damages,
2 the Court’s discretion in fashioning equitable relief is very broad and can be awarded in
3 situations where the entitlement to damages may prove difficult. *Cortez v. Purolator Air*
4 *Filtration Products Co.*, 23 Cal.4th 163, 177-180 (2000) (Restitution under the UCL can
5 be awarded “even absent individualized proof that the claimant lacked knowledge of the
6 overcharge when the transaction occurred.”). Thus, restitution would allow recovery even
7 when normal consideration associated with damages would not. See, e.g., *Fladeboe v. Am.*
8 *Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available
9 even in situations where damages may not be available). Furthermore, the standard and
10 necessary elements for a violation of the UCL “unlawful” and “unfair” prongs are different
11 from the standard that governs legal claims.

12 78. Plaintiff, on behalf of himself and the members of the California Class, seeks
13 restitution and restitutionary disgorgement of all moneys received by Defendants through
14 the conduct described above.

15 79. Plaintiff, on behalf of himself and the members of the California Class, seeks
16 an injunction from this Court prohibiting Defendant from engaging in the patterns and
17 practices described herein, including putting a stop to the deceptive advertisements and
18 false reference prices in connection with Defendant's sale of products on its website.
19 Plaintiff and class members are entitled to injunctive relief. On information and belief, the
20 dissemination of Defendant's false and misleading advertising is ongoing

SECOND CAUSE OF ACTION

**VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &
PROF. CODE § 17500, et seq.**

(On Behalf of the California Class)

25 ||| 80. Plaintiff restates the preceding allegations as if set forth herein.

26 81. The California False Advertising Law, codified at California Business &
27 Professions Code section 17500, et seq. (the “FAL”) provides, in relevant part, that it is
28 unlawful for any business, with intent directly or indirectly to dispose of personal property,

1 to make or disseminate in any “manner or means whatever, including over the Internet,
2 any statement, concerning that . . . personal property . . . which is untrue or misleading,
3 and which is known, or which by the exercise of reasonable care should be known, to be
4 untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500. The “intent” required by section
5 17500 is the intent to dispose of property, and not the intent to mislead the public in the
6 disposition of such property.

7 82. A separate section of the FAL provides, in relevant part, that “no price shall
8 be advertised as a former price of any advertised thing, ***unless the alleged former price***
9 ***was the prevailing market price . . . within three months next immediately preceding the***
10 ***publication of the advertisement*** or unless the date when the alleged former price did
11 prevail is clearly, exactly, and conspicuously stated in the advertisement.” Cal Bus. & Prof.
12 Code § 17501. Defendant violated this statute.

13 83. Defendant routinely disseminated on its website false reference prices for the
14 products offered for sale on their website, including to Plaintiff. Such statements of
15 Defendant were untrue, or at the very least, were misleading. Among other things,
16 Defendant rarely, if ever, offered its custom products on its website at the reference prices
17 displayed in connection with their products. Further, Defendant rarely, if ever, offered
18 products on its website at the reference prices within the three months immediately
19 preceding the publication of the reference prices. Defendant thus misled customers,
20 including Plaintiff, into believing that the reference prices are or were genuine original,
21 retail, or former prices and that the “sale” prices relative to the published reference prices,
22 in fact, reflected real and substantial discounts. Defendant’s deceptive marketing practice
23 gave consumers the false impression that their products were regularly sold for a
24 substantially higher price in the recent past than they actually were and thus led to the
25 false impression that Defendant’s products were worth more than they actually were.

26 84. Defendants knew that its dissemination of reference prices for the products
27 sold on its website was untrue and/or misleading. Among other things, Defendant
28 represented the reference prices in connection with the products sold on its website even

1 though they knew that such products had rarely, if ever, sold at the crossed-out reference
2 prices.

3 85. As a direct and proximate result of Defendant's misleading and false
4 advertisements, Plaintiff and members of the California Class have suffered injury in fact
5 and have lost money. As such, Plaintiff requests that this Court order Defendant to restore
6 this money to Plaintiff and all members of the California Class, and to enjoin Defendant
7 from continuing its false and misleading advertising practices in violation of California
8 law in the future. Otherwise, Plaintiff, members of the Class, and the broader general
9 public will be irreparably harmed and/or denied an effective and complete remedy.

10 86. Plaintiff and class members are entitled to injunctive relief. On information
11 and belief, the dissemination of Defendant's false and misleading advertising is ongoing.

12 87. In the alternative to those claims seeking remedies at law, Plaintiff and class
13 members allege that there is no plain, adequate, and complete remedy that exists at law to
14 address Defendant's unlawful and unfair business practices. The legal remedies available
15 to Plaintiffs are inadequate because they are not "equally prompt and certain and in other
16 ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
17 (1937); *see also United States v. Bluitt*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992)
18 ("The mere existence' of a possible legal remedy is not sufficient to warrant denial of
19 equitable relief."); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) ("The mere fact
20 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To
21 have this effect, the remedy must also be speedy, adequate, and efficacious to the end in
22 view ... It must reach the whole mischief and secure the whole right of the party in a
23 perfect manner at the present time and not in the future."). Additionally, unlike damages,
24 the Court's discretion in fashioning equitable relief is very broad and can be awarded in
25 situations where the entitlement to damages may prove difficult. *Cortez v. Purolator Air*
26 *Filtration Products Co.*, 23 Cal.4th 163, 177-180 (2000) (Restitution under the UCL can
27 be awarded "even absent individualized proof that the claimant lacked knowledge of the
28 overcharge when the transaction occurred."). Thus, restitution would allow recovery even

1 when normal consideration associated with damages would not. *See, e.g., Fladeboe v. Am.*
2 *Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007) (noting that restitution is available
3 even in situations where damages may not be available). Furthermore, the standard and
4 necessary elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are
5 different from the standard that governs legal claims.

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,
8 CAL. CIV. CODE § 1750, et seq.
9 (On Behalf of the California Class)**

10 88. Plaintiff restates the preceding allegations as if set forth herein.

11 89. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.* (the
12 “CLRA”), is a California consumer protection statute which allows plaintiffs to bring
13 private civil actions for “unfair methods of competition and unfair or deceptive acts or
14 practices undertaken by any person in a transaction . . . which results in the sale or lease
15 of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

16 90. Plaintiff and each member of the California Class are “consumers” as defined
17 by California Civil Code section 1761(d). Defendant’s sale of its products on its website
18 to Plaintiff and the Class were “transactions” within the meaning of California Civil Code
19 section 1761(e). The products purchased by Plaintiff and the class are “goods” within the
20 meaning of California Civil Code section 1761(a).

21 91. Defendants violated and continue to violate the CLRA by engaging in the
22 following practices prohibited by California Civil Code section 1770(a) in transactions
23 with Plaintiff and the class which were intended to result in, and did result in, the sale of
24 Defendant’s products:

25 a. Advertising goods or services with intent not to sell them as advertised (Cal.
26 Civ. Code § 1770(a)(9))
27 b. Making false or misleading statements of fact concerning reasons for,
28 existence of, or amounts of price reductions (Cal. Civ. Code § 1770(a)(13))

1 c. Misrepresenting that goods are of a particular standard, quality, or grade (Cal.
2 Civ. Code § 1770(a)(7))

3 d. Representing that goods do have characteristics they do not actually have
4 (Cal. Civ. Code § 1770(a)(5))

5 92. With regards to section 1770(a)(9), (7), and (5), Defendant advertised and
6 represented its products on its website with the “intent not to sell” them as advertised and
7 misrepresenting product characteristics and standard because, as explained herein, (a) the
8 false reference prices advertised in connection with products offered on the website misled
9 and continue to mislead customers into believing the merchandise was previously offered
10 for sale and/or sold at the higher reference prices for some reasonably substantial period
11 of time, and were valued in the market at the advertised “regular” price, (b) Defendant
12 sells their custom products only on its website and thus there is no other channel through
13 which the products have previously been offered for sale and/or sold at the false reference
14 price, and (c) Defendant falsely represents its products as on sale for limited time when in
15 truth a new equivalent sale is instituted after the expiration of an existing sale.

16 93. With regards to section 1770(a)(13), Defendant made false or misleading
17 statements of fact concerning the “existence of” and the “amounts of price reductions”
18 because, among other things, (a) no true price reductions existed in that Defendant’s
19 merchandise was rarely, if ever, previously offered for sale and/or sold at the higher
20 reference prices for a reasonably substantial period of time, (b) Defendant sells its products
21 only on its website and thus there is no other channel through which the products have
22 previously been offered for sale and/or sold at the false reference price, (c) the reference
23 prices Defendant advertised in connection with its products necessarily cannot be former
24 prices or prevailing market prices because Defendant sells its custom products only on its
25 website and thus, the items were never sold elsewhere for any other prices besides the
26 falsely discounted sale prices at which customers bought items from Defendant, and (d)
27 Defendant falsely represents its products as on sale for limited time when in truth a new
28 equivalent sale is instituted after the expiration of an existing sale.

1 94. In addition, Defendant had a duty to disclose the truth about its pricing
2 deception, including, among other things, that the reference prices advertised and
3 published on their website were not, in fact, prices at which Defendant's items had sold
4 for in the recent past for a reasonably substantial period of time, but in reality, Defendant's
5 products rarely (if ever) were offered or sold at the advertised reference prices. Defendant
6 also failed to disclose that the expiration of any given sale would be followed by a
7 substantially equivalent sale. Defendant, however, concealed this material information
8 from consumers and the general public. Members of the public, therefore, were also likely
9 to be deceived by Defendant's failure to disclose material information.

10 95. Plaintiff and the class reasonably relied on Defendant's representations.
11 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
12 the items they purchased from Defendants, or, at the very least, they would not have paid
13 as much for the items as they ultimately did. Plaintiff and the class's reliance was a
14 substantial factor in causing them harm.

15 96. Had the omitted information been disclosed, Plaintiff reasonably would have
16 behaved differently. Among other things, Plaintiff would not have purchased the items he
17 purchased from Defendant, or, at the very least, would not have paid as much for the items
18 as he ultimately did.

19 97. Plaintiff, through counsel, has sent notice to Defendant pursuant to Cal. Civ.
20 Code § 1782(a), but the 30-day response period has not elapsed. Thus, Plaintiff claims no
21 damages pursuant to this count, but intends to amend this Complaint after expiration of
22 the response period to seek money damages under the CLRA. At this time, Plaintiff seeks
23 only injunctive or other equitable relief under the CLRA as described above.

FOURTH CAUSE OF ACTION

FRAUD (INTENTIONAL MISREPRESENTATION AND CONCEALMENT)
(On Behalf of the California Class)

27 ||| 98. Plaintiff restates the preceding allegations as if set forth herein.

1 99. Defendant made false or misleading statements of fact concerning the
2 existence of and the amounts of price reductions because, among other things, (a) no true
3 price reductions existed in that Defendant's merchandise was rarely, if ever, previously
4 offered for sale and/or sold at the higher reference prices for a reasonably substantial
5 period of time, and did not have a market value at the advertised "regular" price, (b)
6 Defendant sells its products only on its website and thus there is no other channel through
7 which the products have previously been offered for sale and/or sold at the false reference
8 price, (c) the reference prices Defendant advertised in connection with its products
9 necessarily cannot be former prices or prevailing market prices because Defendant sells
10 its custom products only on its website and thus, the items were never sold elsewhere for
11 any other prices besides the falsely discounted sale prices at which customers bought items
12 from Defendant, and (d) Defendant falsely represents its products as on sale for limited
13 time when in truth a new equivalent sale is instituted after the expiration of an existing
14 sale.

15 100. In addition, Defendant had a duty to disclose the truth about its pricing
16 deception, including, among other things, that the reference prices advertised and
17 published on their website were not, in fact, prices at which Defendant's items had sold
18 for in the recent past for a reasonably substantial period of time, but in reality, Defendant's
19 products rarely (if ever) were offered or sold at the advertised reference prices. Defendant
20 also failed to disclose that the expiration of any given sale would be followed by a
21 substantially equivalent sale. Defendant, however, concealed this material information
22 from consumers and the general public. Members of the public, therefore, were also likely
23 to be deceived by Defendant's failure to disclose material information.

24 101. Defendant knew that its representations were false when made, or at the very
25 least, made recklessly and without regard for their truth. Defendant knew that the items
26 Plaintiff and the class purchased had rarely, if ever, sold at the substantially higher
27 reference price displayed on Defendant's website in the recent past and/or in the prevailing
28 market, and knew its sales were advertised with false expiration dates.

1 102. Defendant's representations were made with the intent that Plaintiff and the
2 class rely on the false representations and spend money they otherwise would not have
3 spent, purchase items they otherwise would not have purchased, and/or spend more money
4 for an item than they otherwise would have absent the deceptive marketing scheme.

5 103. Defendant engaged in this fraud to the Plaintiff and the Class's detriment in
6 order to increase Defendant's own sales and profits.

7 104. Plaintiff and the class reasonably relied on Defendant's representations.
8 Absent Defendant's misrepresentations, Plaintiff and the Class would not have purchased
9 the items they purchased from Defendants, or, at the very least, they would not have paid
10 as much for the items as they ultimately did. Plaintiff and the class's reliance was a
11 substantial factor in causing them harm.

12 105. Had the omitted information been disclosed, Plaintiff reasonably would have
13 behaved differently. Among other things, Plaintiff would not have purchased the items he
14 purchased from Defendant, or, at the very least, would not have paid as much for the items
15 as he ultimately did.

16 106. As a direct and proximate result of the above, Plaintiff and the class have
17 suffered damages in an amount to be proven at trial.

18 107. Plaintiff and the class are also entitled to punitive or exemplary damages.
19 Defendants undertook the illegal acts intentionally or with conscious disregard of the
20 rights of Plaintiff and the class, and did so with fraud, malice, and/or oppression. Based
21 on the allegations above, Defendant's actions constituted fraud because Defendant
22 intended to and did deceive and injure Plaintiff and the class. Based on the allegations
23 above, Defendant's actions constituted malice because Defendant acted with the intent to
24 and did cause injury to Plaintiff and the class, and also because Defendant's deceptive
25 conduct was done with a willful and knowing disregard of the rights of Plaintiff and the
26 class.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

(On Behalf of the California Class)

108. Plaintiff restates the preceding allegations as if set forth herein.

109. Plaintiff pleads this claim under California law.

110. Plaintiff and the class entered into contracts with Defendant when they placed orders for merchandise through Defendant's website. The contracts were based on the written advertisements and product listings, and memorialized in invoices sent to Plaintiff and class members.

111. Pursuant to the contracts, purchasers agreed to pay Defendant the invoiced price for the merchandise ordered.

112. In exchange, Defendant was obligated to provide merchandise that had a market value equal to or higher than the regular or “pre-sale” prices displayed on the invoices and product listings. Furthermore, Defendant was obligated to provide a specific percentage discount as represented on the website’s landing page and individual product listings. These pricing terms were material terms of the contract.

113. Plaintiff and the Class satisfied their obligations under the contract and paid for the merchandise.

114. Defendant breached the contract by failing to provide merchandise that had a market value equal to the regular price displayed on its website. Defendant further breached the contract by failing to provide the agreed discount.

115. Plaintiff served a demand letter by email and overnight mail notifying Defendant of the breach on June 8, 2023. Plaintiff and the class have been damaged, in an amount to be proven at trial, by paying the regular market price of the purchased products and did not receive the specific percentage discount agreed.

SIXTH CAUSE OF ACTION

BREACH OF IMPLIED CONTRACT

(On Behalf of California Class)

116. Plaintiff restates the preceding allegations as if set forth herein.

1 117. Plaintiff pleads this claim under California law. Plaintiff pleads this claim in
2 the alternative to his breach of contract claim (1) in the event an express contract for a
3 product with a fair market value at the “regular” or “stricken” reference price was not
4 formed, or (2) as supplemental terms consistent with any express written contract.

5 118. Plaintiff and the class entered into implied in fact contracts with Defendant
6 when they placed orders for merchandise through Defendant’s website. The contracts
7 were based on the written advertisements and product listings, including the “regular” or
8 “stricken” reference price.

9 119. A meeting of the minds occurred when Plaintiff submitted, and Defendant
10 accepted, payment for a product with the shown reference price on the product listing.

11 120. Defendant breached the contract by failing to provide merchandise that had
12 a market value equal to the regular price displayed on its website. Defendant further
13 breached the contract by failing to provide the agreed discount.

14 121. Plaintiff and the class have been damaged, in an amount to be proven at trial,
15 by paying the regular market price of the purchased products and did not receiving the
16 specific percentage discount agreed.

SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT/QUASI-CONTRACT
(On Behalf of California Class)

20 ||| 122. Plaintiff restates the preceding allegations as if set forth herein.

21 ||| 123. Plaintiff pleads this claim under California law.

22 124. Plaintiff pleads this claim in the alternative to breach of contract in the event
23 no contract exists in which Defendant was obligated to provide merchandise that had a
24 market value equal to or higher than the regular or “pre-sale” prices displayed on the
25 invoices and product listings and a specific percentage discount as represented on the
26 website’s landing page and individual product listings.

27 125. By its wrongful acts and omissions, Defendant was unjustly enriched at the
28 expense of and to the detriment of Plaintiff and the Class and/or while Plaintiff and the

1 Class were unjustly deprived. Defendant's unlawful and deceptive pricing scheme
2 induced Plaintiff and the Class to spend money they otherwise would not have spent,
3 purchase items they otherwise would not have purchased, and/or spend more money for a
4 product than they otherwise would have absent the deceptive advertising.

5 126. On behalf of the Class, Plaintiff seeks restitution from Defendant and an order
6 disgorging all payments and profits obtained by Defendant from its wrongful conduct.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class,
9 respectfully prays for following relief:

- 10 a. Certification of this case as a class action on behalf of the proposed Class and
11 subclasses defined above, appointment of Plaintiff as Class representative,
12 and appointment of their counsel as Class counsel;
- 13 b. An award to Plaintiff and the proposed Class and subclasses of restitution
14 and/or other equitable relief, including, without limitation, restitutionary
15 disgorgement of all profits Defendant obtained from Plaintiff and the
16 proposed Class as a result of its unlawful, unfair and fraudulent business
17 practices described herein;
- 18 c. An injunction ordering Defendant to cease the false advertising and unfair
19 business practices complained of herein;
- 20 d. An award of all economic, monetary, actual, consequential, and
21 compensatory damages caused by Defendant's conduct;
- 22 e. An award of nominal, punitive, and statutory damages where available;
- 23 f. Reasonable expenses and attorneys' fees;
- 24 g. Pre- and post-judgment interest, to the extent allowable; and
- 25 h. For such further relief that the Court may deem just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff, individually and on behalf of the proposed Class, demands a trial by jury
28 for all claims so triable.

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2 Dated: June 9, 2023
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MILBERG COLEMAN BRYSON
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By: /s/ Alexander E. Wolf
ALEXANDER E. WOLF
Attorneys for Plaintiff